IN THE COURT OF APPEALS OF THE STATE OF ALASKA

DARRON PETER SANDERS, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-11609 Trial Court No. 3PA-10-1665 CR MEMORANDUM OPINION No. 6332 — May 18, 2016

Appeal from the Superior Court, Third Judicial District, Palmer, Gregory Heath, Judge.

Appearances: David D. Reineke, under contract with the Public Defender Agency, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Kenneth M. Rosenstein, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Craig W. Richards, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Suddock, Superior Court Judge.[*]

Judge SUDDOCK.

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

Darron Peter Sanders was convicted of ten counts of misconduct involving controlled substances and two counts of misconduct involving weapons. On appeal, he contends that the superior court erred when it denied his motion to suppress evidence discovered when state troopers, responding to an assault in Sanders's residence, conducted a protective sweep. He argues that this protective sweep was an unlawful warrantless search.

Because the record supports the superior court's decision that the troopers had reasonable cause to conduct a protective sweep of the residence, we affirm the denial of Sanders's motion to suppress.

Background

On March 24, 2010, at about 10:30 in the evening, the Palmer Police Department dispatch received a 911 call. The dispatcher heard someone crying, but then the caller apparently hung up the telephone. After the dispatcher called back and left a message, the dispatcher received a second call. In this call, the dispatcher heard the caller, a woman, crying for about thirty seconds before she said, "Get away from my daughter. He's trying to kill us." The call was then disconnected. The call was traced to Sanders's residence. The Palmer Police dispatcher alerted the Alaska State Troopers.

When Alaska State Trooper Abraham Garcia arrived at Sanders's residence, he saw a red light mounted on the roof that he associated with a security camera and a motion sensor. He could see that the kitchen and living room were in disarray. It was dark when he arrived, and the house was isolated.

Garcia went to the back of the house where he heard screaming inside. Through a bedroom window he saw Sanders standing over a woman and holding her down. Garcia called for backup. He then kicked the front door in.

As he entered the house, he smelled an "overwhelming" odor of cultivated marijuana, and saw a bullet-proof vest in the living room. Garcia proceeded to the back bedroom where Sanders was still standing over the woman. Garcia placed Sanders in handcuffs and took him to the living room, which was visible from the bedroom. At that point, Garcia saw a shotgun in the living room that he had not initially noticed. He returned to the bedroom to talk with the victim.

Alaska State Trooper Timothy Cronin responded to Garcia's call for backup with flashing lights and siren. He believed that he was responding to a "high-stress-level call." Upon entering the residence, he too smelled marijuana and saw the bullet-proof vest. The vest heightened his concern for safety. He also observed security cameras in each room, and this put him further on guard. A monitor in the living room showed views from several different cameras. Cronin concluded that the house was the site of drug activity and that it might be defended by violent persons.

Garcia informed Cronin that he had not performed a full protective sweep. Cronin then checked for people in every room. In the bedroom closet, he saw marijuana hanging from the clothes rod, and he saw an open door leading to a lighted crawl space.

By this time a third trooper had arrived. With this trooper providing security, Cronin climbed down a ladder into the crawl space. There he found a man sitting in a chair overseeing a large number of marijuana plants.

Based on the evidence observed in plain view during the protective sweep, the troopers obtained a search warrant. When they executed the warrant, they encountered a large and sophisticated commercial marijuana growing operation under the residence, with numerous marijuana plants, over eleven pounds of unprocessed marijuana, and about eleven pounds of processed marijuana. They also found more than one-half ounce of cocaine and other controlled substances, along with three firearms.

Sanders was charged with ten counts of misconduct involving controlled substances and two counts of misconduct involving weapons. He moved to suppress the evidence, arguing that the protective sweep was an unlawful warrantless search. After holding an evidentiary hearing, Superior Court Judge Gregory Heath upheld the sweep and denied the motion. Judge Heath found that the troopers reasonably believed that their safety might be in danger from other people in the house.

Judge Heath did not err when he upheld the protective sweep

Sanders claims that Judge Heath erred when he upheld the protective sweep. We disagree.

In *Brand v. State*, we explained that a "protective sweep" is a "quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others."[1] A protective sweep is justified in light of "articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbor[ed] an individual posing a danger to those on the arrest scene."[2]

Here, Sanders argues that the troopers lacked specific evidence that another person might be present. But we rejected this same contention in *Brand*: "[a]s Professor LaFave notes, there are indeed situations 'where the arresting officers are not possessed of concrete information tending to show that other persons are presently in the premises entered, [but the] dominant consideration is the seriousness of the criminal conduct for

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[1] *Brand v. State*, 204 P.3d 383, 385 (Alaska App. 2009) (quoting *Maryland v. Buie*, 494 U.S. 325, 327 (1990)).

[2] *Id.* (quoting *Buie*, 494 U.S. at 334).

which the arrest was made, considering all the known circumstances.'"[3] In other words, a protective sweep may be justified "despite uncertainty of whether a residence contains any other individuals."[4]

Thus, even without concrete evidence tending to show other persons were in the house, a protective sweep is allowed when police "are arresting inherently dangerous individuals involved in the drug trade."[5] While Professor LaFave notes that a protective sweep is not justified "in every instance of an 'in-home arrest for a violent crime,'" he explains that "courts have frequently upheld the use of the 'protective sweep' when the arrest was made in a place believed to be a major narcotics distribution or manufacturing point."[6]

Additionally, Professor LaFave notes that the time and place of the arrest should be taken into account "[because] a 'protective sweep' may seem much more necessary when the arrest is made at night in a remote location, for in such a situation there is less of an opportunity for the arresting officers to make a safe withdrawal from the premises with their prisoner."[7] Here, Garcia testified that it was dark out, and that the house was remote.

In sum, the troopers were confronted with substantial evidence connoting danger — the strong odor of cultivated marijuana, the bullet-proof vest, the shotgun, and

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[3] *Id.* at 387 (quoting 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 6.4(c), p. 377 (4th ed. 2004)) (this passage in now found at page 495 of the 5th ed. 2012).

[4] *Id.*

[5] *Id.* (citing *United States v. Castillo*, 866 F.2d 1071, 1080-81 (9th Cir. 1988)).

[6] 3 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 6.4(c), pp. 495-96 (5th ed. 2012).

[7] *Id.* at 499-500.

the pervasive security. This evidence suggested a commercial drug operation and that one or more persons had taken extraordinary steps to detect intruders and had prepared for armed resistance. But the troopers did not know where in the house the grow was located, or whether the security system was monitored from that locale. Accordingly, until the troopers checked all the rooms in the home, they remained at risk.

Judge Heath found that the search only took several minutes, occurred while Garcia was still investigating the assault, and "lasted no longer than necessary to dispel the reasonable suspicion of danger." The record supports Judge Heath's findings and his ruling. Accordingly, Judge Heath did not err when he denied Sanders's motion to suppress.

Conclusion

The judgment of the superior court is AFFIRMED.